

E-Filed on 01/16/08

DIAMOND MCCARTHY LLP

909 Fannin, Suite 1500
Houston, Texas 77010
Telephone (713) 333-5100
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800
Email: adiamond@diamondmccarthy.com
Eric D. Madden, TX State Bar No. 24013079
Email: emadden@diamondmccarthy.com

Special Litigation Counsel for USACM Liquidating Trust

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Telephone (702) 949-8320
Facsimile (702) 949-8321

Susan M. Freeman, AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles, NV State Bar No. 006593
Email: rcharles@lrlaw.com

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**MOTION FOR ORDER REQUIRING
THOMAS E. MOOREY TO APPEAR
FOR EXAMINATION PURSUANT
TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

[No hearing required]

Pursuant to Federal Rule of Bankruptcy Procedure 2004, the USACM Liquidating Trust (the "Trust" or "Movant") hereby moves this Court for an order requiring Thomas E. Moorey ("Moorey") to appear, as set forth in the subpoena to be issued under Federal Rule of Bankruptcy Procedure 9016, to appear for examination at the office of Southwest

1 Florida Reporting Services, 13180 Cleveland Avenue, Fort Myers, Florida 33903, on a
2 business day no earlier than ten (10) business days after the filing of this Motion and no
3 later than March 31, 2008 (or at such other mutually agreeable location, date, and time)
4 and continuing from day to day thereafter until completed.
5

6 This Motion is further explained in the following Memorandum.

7
8 **Memorandum**

9 The Movant seeks information concerning various transactions and other dealings
10 involving Moorey and USACM, the other debtors in the above-captioned cases (together
11 with USACM, the “Debtors”), and the Debtors’ affiliates, subsidiaries, parents, or
12 otherwise related entities. The Movant seeks this information to assist in the collection of
13 the assets and the investigation of the liabilities of the Debtors.
14

15 The requested discovery from Moorey is well within the scope of examination
16 permitted under Bankruptcy Rule 2004, which includes:

17 [t]he acts, conduct, or property or . . . the liabilities and financial condition
18 of the debtor, or . . . any matter which may affect the administration of the
19 debtor’s estate, or to the debtor’s right to a discharge. In a . . .
20 reorganization case under chapter 11 of the Code, . . . the examination may
21 also relate to the operation of any business and the desirability of its
22 continuance, the source of any money or property acquired or to be acquired
23 by the debtor for purposes of consummating a plan and the consideration
24 given or offered therefore, and any other matter relevant to the case or to the
25 formulation of a plan.¹
26

27 **Conclusion**

28 Accordingly, the Movant requests that this Court enter the form of order submitted
29 with this Motion.
30

¹ FED.R. BANKR. P. 2004(b).

1 Dated: January 16, 2008.

2 **DIAMOND MCCARTHY LLP**

3 **LEWIS AND ROCA LLP**

4 By: /s/ Eric D. Madden
5 Allan B. Diamond, TX 05801800 (pro hac vice)
6 William T. Reid, IV, TX 00788817 (pro hac vice)
7 Eric D. Madden, TX 24013079 (pro hac vice)
8 909 Fannin, Suite 1500
9 Houston, Texas 77010
(713) 333-5100 (telephone)
(713) 333-5199 (facsimile)

By: /s/ Rob Charles
Susan M. Freeman, AZ 4199 (pro hac vice)
Rob Charles, NV 6593
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8320(telephone)
(702) 949-8321(facsimile)

10 *Special Litigation Counsel for USACM*
11 *Liquidating Trust*

Counsel for USACM Liquidating Trust